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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,728	03/28/2006	Peter C. Williams	2218807113	2264
24024 7590 06/08/2009 CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114				
EXAMINER HEWITT, JAMES M				
ART UNIT		PAPER NUMBER		
3679				
NOTIFICATION DATE		DELIVERY MODE		
06/08/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@calfee.com
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Office Action Summary

Application No.

10/573,728

Applicant(s)

WILLIAMS ET AL.

Examiner

JAMES M. HEWITT

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 23-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I in the reply filed on 3/30/09 is acknowledged.

Claims 23-33 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention there being no allowable generic or linking claim.

Information Disclosure Statement

The following documents in the information disclosure statement filed 8/17/09 have not been considered as they do not include a proper explanation of relevance and/or an English translation per 37 CFR 1.97 and 1.98: Japanese documents 55-181082, 5621679, 56665886, 56124787, 63231086, 3-69026, U3069026, 7243564, 200199360 and all of those Japanese documents listed on sheets 7 and 9; Korean documents 19920008397, 19930006359, 20010006382, 200239292.

The following documents in the information disclosure statement filed 8/17/09 have not been considered as they do not include or have been provided a publication date per 37 CFR 1.97 and 1.98: all of those documents listed on sheet 17 except for the last.

Specification

The abstract of the disclosure is objected to because it also describes the nonelected invention. Correction is required. See MPEP § 608.01(b).

Claim element "means for exerting" is a means plus function limitation that invokes 35 USC 112 6th paragraph. The written description only implicitly or inherently sets forth the corresponding structure, material, or acts that perform the claimed function.

Pursuant to 37 CFR 1.75(d) and MPEP 2182 and 60.01(o), applicant is required to:

- (a) Amend the claim so that the claim limitation will no longer be a means plus function limitation under 35 USC 112 6th paragraph; or
- (b) Amend the written description of the specification such that expressly recites the corresponding structure, material or acts to the claimed function and clearly links or associates the corresponding structure, material or acts to the claimed function, without introducing new matter (35 USC 132(a)); or
- (c) State on the record what the corresponding structure, material or acts, which are implicitly or inherently set forth in the written description of the specification that perform the claimed function.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-16 and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, it is unclear whether the claim element "means...for drawing..." is a means plus function limitation that invokes 35 USC 112, 6th paragraph because the phrase "means for" is not used. If applicant wishes to have the claim limitation treated under 35 USC 112 6th paragraph, applicant is required to:

(a) Amend the claim to include the phrase "means for" in accordance with these guidelines: the phrase "means for" must be modified by functional language and the phrase must not be modified by sufficient structure, material, or acts for performing the claimed function; or

(b) Show that the claim limitation is written as a function to be performed and the claim does not recite sufficient structure, material or acts for performing the claimed function which would preclude application of 35 USC 112 6th paragraph. For more information, see MPEP 2182.

In claim 12, claim element "means for exerting" is a means plus function limitation that invokes 35 USC 112 6th paragraph. However, the written description fails to clearly link or associate the disclosed structure, material, or acts to perform the claimed function. The specification does not make clear what constitutes the "means for exerting radially inwardly directed force on the first and second surfaces".

Applicant is required to:

- (a) Amend the claim so that the claim limitation will no longer be a means plus function limitation under 35 USC 112 6th paragraph; or
 - (b) Amend the written description of the specification such that it clearly links or associates the corresponding structure, material or acts to the claimed function without introducing new matter (35 USC 132(a)); or
 - (c) State on the record where the corresponding structure, material or acts are set forth in the written description of the specification that perform the claimed function.
- For more information, see 37 CFR 1.75(d) and MPEP 2182 and 60.01(o).

As to claim 15, reciting that the ferrule is formed as one piece with the second coupling member contradicts claim 11, from which claim 15 depends, which infers, or at the very least implies that the ferrule and second coupling member are disparate.

In claim 19, at least one surface of what?

As to claim 21, reciting that the ferrule is formed as one piece with the second coupling member contradicts claim 17, from which claim 121 depends, which infers, or at the very least implies that the ferrule and second coupling member are disparate.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10-14, 16-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by McWane (US 1,261,254).

As to claim 1, McWane discloses a tube fitting for connection with a tube, said tube fitting comprising first and second flanged members (1/2/16/17; 11/14) and a ferrule (8) between said first and second flanged members, said ferrule engaging said tube to form a tube grip and seal when said first and second flanged members are drawn together.

As to claim 2, McWane discloses a tube fitting as set forth in claim 1 wherein said first and second flanged members are drawn together without relative rotation between said first and second flanged members.

As to claim 3, McWane discloses a tube fitting as set forth in claim 1 wherein there is no threaded connection between said first and second flanged members.

As to claim 4, McWane discloses a tube fitting as set forth in claim 1 further including a clamp (18a) for exerting radial force on said first and second flanged members to draw said first and second flanged members together.

As to claim 5, McWane discloses a tube fitting as set forth in claim 4 wherein said first and second flanged members have respective non-parallel surfaces that are engaged by said clamp.

As to claim 6, McWane discloses a tube fitting as set forth in claim 5 wherein said non-parallel surfaces are conical surfaces.

As to claim 7, McWane discloses a tube fitting as set forth in claim 5 wherein said non-parallel surfaces are flat surfaces.

As to claim 8, McWane discloses a tube fitting as set forth in claim 1 wherein said ferrule is axially driven by the first flanged member against the second flanged member to grip and seal against the tube without relative rotation between the first flanged member and the ferrule.

As to claim 10, McWane discloses a tube fitting as set forth in claim 1 wherein said ferrule is a separate piece from said first and second flanged members.

As to claim 11, McWane discloses a coupling apparatus for coupling to a tube having an axis and an end portion, said apparatus comprising: a first coupling member (1/2/16/17) to which the tube is to be joined in sealing engagement, the first coupling member having a tube socket for receiving the end portion of the tube, the first coupling

member having a first surface; a ferrule (8) movable axially along the tube into engagement with the first coupling member; a second coupling member (11/14) movable axially along the tube for moving the ferrule into gripping engagement with the tube, the second coupling member having a second surface that is not parallel to the first surface; and means (18a) engageable with the first and second surfaces for drawing the first and second coupling members together axially thereby to hold the ferrule against the first coupling member.

As to claim 12, McWane discloses an apparatus as set forth in claim 11 wherein said means for drawing includes means for exerting radially inwardly directed force on the first and second surfaces.

As to claim 13, McWane discloses an apparatus as set forth in claim 11 wherein said first and second surfaces are on first and second flanges, respectively, of said first and second coupling members.

As to claim 14, McWane discloses an apparatus as set forth in claim 11 wherein said ferrule is axially driven by the second coupling member against the first coupling member to grip and seal against the tube without relative rotation between the first and second coupling members.

As to claim 16, McWane discloses a tube fitting as set forth in claim 11 wherein said ferrule is a separate piece from said first and second coupling members.

As to claim 17, McWane discloses an apparatus comprising: a tube (3) having an axis and an end portion; a first coupling member (1/2/16/17) to which the tube is to be joined in sealing engagement, said first coupling member having a tube socket for receiving the end portion of the tube; a ferrule (8) movable axially along the tube into engagement with said first coupling member; a second coupling member (11/14); and a tapered clamp (18a) for generating axial force between said first and second coupling members to move said ferrule into gripping engagement with the tube.

As to claim 18, McWane discloses an apparatus as set forth in claim 17 wherein said tapered clamp generates axial force between said first and second coupling members without relative rotation between said first and second coupling members and said ferrule.

As to claim 19, McWane discloses an apparatus as set forth in claim 18 wherein said tapered clamp comprises a member movable radially inward toward the axis to apply radial force to at least one surface that is not perpendicular to the axis thereby to cause axial force to be applied to said ferrule.

As to claim 20, McWane discloses an apparatus as set forth in claim 19 wherein said first and second coupling members have first and second flange surfaces, respectively, that are not parallel to each other, said at least one surface being one of said first and second flange surfaces.

As to claim 22, McWane discloses a tube fitting as set forth in claim 17 wherein said ferrule is a separate piece from said first and second coupling members.

Claims 1-9 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Latham et al (US 3,404,902).

As to claim 1, Latham discloses a tube fitting, said tube fitting comprising first and second flanged members (56; 58) and a ferrule (60) between said first and second flanged members.

As to claim 2, Latham discloses a tube fitting as set forth in claim 1 wherein said first and second flanged members are drawn together without relative rotation between said first and second flanged members.

As to claim 3, Latham discloses a tube fitting as set forth in claim 1 wherein there is no threaded connection between said first and second flanged members.

As to claim 4, Latham discloses a tube fitting as set forth in claim 1 further including a clamp (50) for exerting radial force on said first and second flanged members to draw said first and second flanged members together.

As to claim 5, Latham discloses a tube fitting as set forth in claim 4 wherein said first and second flanged members have respective non-parallel surfaces that are engaged by said clamp.

As to claim 6, Latham discloses a tube fitting as set forth in claim 5 wherein said non-parallel surfaces are conical surfaces.

As to claim 7, Latham discloses a tube fitting as set forth in claim 5 wherein said non-parallel surfaces are flat surfaces.

As to claim 8, Latham discloses a tube fitting as set forth in claim 1 wherein said ferrule is axially driven by the first flanged member against the second flanged member.

As to claim 9, Latham discloses a tube fitting as set forth in claim 1 wherein said ferrule is formed as one piece with one of said first and second flanged members.

As to claim 11, Latham discloses a coupling apparatus comprising: a first coupling member (56), the first coupling member having a tube socket, the first coupling

member having a first surface; a ferrule (60); a second coupling member (58), the second coupling member having a second surface that is not parallel to the first surface; and means (50) engageable with the first and second surfaces for drawing the first and second coupling members together axially thereby to hold the ferrule against the first coupling member.

As to claim 12, Latham discloses an apparatus as set forth in claim 11 wherein said means for drawing includes means for exerting radially inwardly directed force on the first and second surfaces.

As to claim 13, Latham discloses an apparatus as set forth in claim 11 wherein said first and second surfaces are on first and second flanges, respectively, of said first and second coupling members.

As to claim 14, Latham discloses an apparatus as set forth in claim 11 wherein said ferrule is axially driven by the second coupling member against the first coupling member.

As to claim 15, Latham discloses a tube fitting as set forth in claim 11 wherein said ferrule is formed as one piece with the second coupling member.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES M. HEWITT whose telephone number is (571)272-7084. The examiner can normally be reached on M-F, 930am-600pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James M Hewitt/
Primary Examiner, Art Unit 3679